

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOSE MONTES OPICO,

Plaintiff,

v.

CONVERGENT OUTSOURCING, INC.,

Defendant.

Case No. 2:18-CV-1579

ORDER GRANTING
DEFENDANT'S MOTION
FOR LEAVE TO FILE
AMENDED ANSWER

This matter comes before the Court on defendant Convergent Outsourcing, Inc.'s "Motion for Leave to File Amended Answer." Dkt. #20.

BACKGROUND

Plaintiff Jose Montes Opico alleges that defendant unlawfully attempted to collect on a debt that he did not owe to T-Mobile in 2018. Dkt. #1-1 (Compl.) at ¶¶ 4–15. He brought claims alleging violations of the Fair Debt Collection Practices Act ("FDCPA"), see 15 U.S.C. §§ 1692e–1692g, the Washington Collection Agency Act, see RCW 19.16.250, RCW 19.16.440, and the Washington Consumer Protection Act, see RCW 19.86 *et seq.* Dkt. #1-1 at ¶¶ 20–40.

Defendant's Answer included seventeen affirmative defenses. Dkt. #4. Plaintiff filed a motion to strike all of them. Dkt. #5. In its response to the motion, defendant requested the leave of the Court to file an Amended Answer with only ten of its affirmative defenses, including its Third Affirmative Defense for bona fide error. Dkt. #7 at 1; see Dkt. #7-1 (Am. Ans.) at 7. On April 19, 2019, the Court granted defendant leave to file the Amended Answer and granted

ORDER GRANTING DEFENDANT'S MOTION
FOR LEAVE TO FILE AMENDED ANSWER - 1

1 plaintiff's motion to strike the remaining ten affirmative defenses, including the defense for
 2 bona fide error. Dkt. #15. Defendant now requests leave to file another Amended Answer that
 3 asserts a single affirmative defense for bona fide error under 15 U.S.C. § 1692k(c) of the
 4 FDCPA. Dkt. #20; see Ex. A, Dkt. #20-1 at 6–7. Defendant argues that it has corrected the
 5 deficiencies originally identified by the Court by including the facts it uncovered in its
 6 subsequent investigation. Dkt. #20 at 2.

7 DISCUSSION

8 **A. Legal Standard**

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 10 Other than an amendment as a matter of course, “a party may amend its pleading only
 11 with the opposing party’s written consent or the court’s leave.” Fed. R. Civ. P. 15(a). The Court
 12 “should freely give leave when justice so requires.” Id. “Several factors govern the propriety of
 13 a motion to amend: (1) undue delay, (2) bad faith, (3) prejudice to the opponent, and (4) futility
 14 of amendment.” Sweaney v. Ada Cty., Idaho, 119 F.3d 1385, 1392–93 (9th Cir. 1997) (citing
 15 Gabrielson v. Montgomery Ward & Co., 785 F.2d 762, 766 (9th Cir. 1986)).

16 “[T]he consideration of prejudice to the opposing party ... carries the greatest weight.”
 17 Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003) (citing DCD
 18 Programs, Ltd. v. Leighton, 833 F.2d 183, 185 (9th Cir. 1987)). “A proposed amendment is
 19 futile only if no set of facts can be proved under the amendment to the pleadings that would
 20 constitute a valid and sufficient claim or defense.” Sweaney, 119 F.3d at 1393 (quoting Miller v.
 21 Rykoff–Sexton, Inc., 845 F.2d 209, 214 (9th Cir. 1988) (alterations omitted)). “[The Rule]
 22 places leave to amend ... within the sound discretion of the trial court. ... In exercising this
 23 discretion, a court must be guided by the underlying purpose of Rule 15 to facilitate decision on
 24 the merits, rather than on the pleadings or technicalities.” United States v. Webb, 655 F.2d 977,
 25 979 (9th Cir. 1981) (internal citations omitted). “Accordingly, Rule 15’s policy of favoring
 26 amendments to pleadings should be applied with “extreme liberality.” Id. (quoting Rosenberg
 27 Brothers & Co. v. Arnold, 283 F.2d 406 (9th Cir. 1960) (per curiam)).

1 **B. Bona Fide Error under the FDCPA**

2 The FDCPA allows a debt collector to escape liability if it “shows by a preponderance of
3 evidence that the violation was not intentional and resulted from a bona fide error
4 notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.” 15
5 U.S.C.A. § 1692k(c). “[T]o qualify for the bona fide error defense, the defendant must prove
6 that (1) it violated the FDCPA unintentionally; (2) the violation resulted from a bona fide error;
7 and (3) it maintained procedures reasonably adapted to avoid the violation.” McCollough v.
8 Johnson, Rodenburg & Lauinger, LLC, 637 F.3d 939, 948 (9th Cir. 2011). Plaintiff argues that
9 the defendant has still failed to properly plead its affirmative defense. Dkt. #23 at 3. The Court
10 disagrees. Defendant has specified the procedures that it maintained. Dkt. #7-1 at 6–7; see
11 Rahman v. San Diego Accounts Serv., No. 16CV2061-JLS (KSC), 2017 WL 1387206, at *3
12 (S.D. Cal. Apr. 18, 2017) (striking bona fide defense where there were no “assertions regarding
13 what particular policies and procedures Defendant ha[d] in place to verify debts, or how or when
14 Defendant attempted to verify [the] particular debt.”); Perez v. Gordon & Wong Law Grp., P.C.,
15 No. 11-CV-03323-LHK, 2012 WL 1029425, at *10 (N.D. Cal. Mar. 26, 2012) (striking bona
16 fide defense where “Defendants fail[ed] to identify in their Answer any actual procedures
17 reasonably employed to prevent the alleged FDCPA ... violations”). The proposed amendment
18 is not futile. Sweaney, 119 F.3d at 1393. Defendant is not required to admit to an error. Dkt. #23
19 at 4–5; see Fed. R. Civ. P. 8(d)(3) (“A party may state as many separate claims or defenses as it
20 has, regardless of consistency.”).

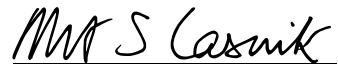
21 Defendant filed this motion almost three months after the Court’s order striking all
22 affirmative defenses. Dkt. #23; see Dkt. #15. However, defendant argues that it brought the
23 motion “as soon as it was able to develop sufficient facts to overcome the Court’s concerns.”
24 Dkt. #20 at 5. There is no undue delay. Nor is there any evidence of bad faith. There is no undue
25 prejudice to plaintiff, as the debt collection procedures utilized by defendant and any errors
26 committed by it are at the heart of this dispute. The purpose of Rule 15 is to facilitate decision
27 on the merits, and its policy of favoring amendments must be applied liberally. Webb, 655 F.2d
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1 at 979. In the absence of this amendment, defendant has no affirmative defenses. Defendant is
2 entitled to amend its answer. Plaintiff may file his own motion if he believes he is prejudiced by
3 the time available to conduct additional and necessary discovery pertinent to the affirmative
4 defense. Dkt. #23 at 5.

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6 **CONCLUSION**

7 For all the foregoing reasons, defendant's motion is GRANTED.

8 DATED this 10th day of September, 2019.

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11 Robert S. Lasnik
12 United States District Judge
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